

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JODHPUR.

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S.B. CIVIL WRIT PETITION NO.5108/2004

Harsa Ram Choudhary & Anr.

Versus

State of Rajasthan and ors.

Date of Order : 16.5.2005

PRESENT

HON'BLE MR. R.P.VYAS,J.

Mr. I.R. Choudhary, for the petitioners

Ms. V. Bora, for the respondents.

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The instant petition has been filed by the petitioners with the prayer that the notification dtd.8.6.2001 (Annex.5) may kindly be quashed and set aside and the respondents may further be directed not to effect any recovery pursuant to the order dtd. 22.5.2003 (Annex.6).

Brief facts of the case are that with a view to remove the financial stagnation of the employees working with the State Government and to grant them financial relief the State Government was pleased enough to provide selection grade on

completion of 9, 18, and 27 years of service vide notification dtd.25.1.1992 (Annex.1).

According to the notification dtd.25.1.1992, if an employee complete 18 years of service and if he has already been accorded one promotion, then he is entitled to get second selection grade only after completion of 18 years of service. The first selection grade is not available to such an employee, who has already been granted one promotion.

In the year 1996, as per the recommendations of the 5th pay commission, the pay scales of the employees of the State Government had undergone revision and to this effect, the Rules known as Rajasthan Civil Services (Revised Pay Scale) Rules, 1998 (hereinafter referred to as the Rules of 1998) were framed. The Rules of 1998 were given effect w.e.f. 1.9.1996 and the pay scales of all the employees who were working under the control of the State Government were revised and respective tables were also prepared under the Rules of 1998.

In this way, all the employees who were

getting their salary in the pay scale of Rs.2000-3200/- their pay scale was revised and they were granted the pay scale No.12 which is Rs.6500-10500. All these employees who were getting the pay in 3rd selection grade in the pay scale of Rs.2000-3500 were also allowed the same pay scale i.e. Rs.6500-10500/- in accordance with the Rules of 1998. Accordingly, the petitioners who were drawing their salary in the pay scale of Rs.2000-3200 was fixed in the pay scale of Rs.6500-10500 and fixation order was issued in favour of the petitioners, but all of a sudden, an amendment has been introduced in the Rajasthan Civil Services (Revised Pay Scale) Rules, 1998 on 8.6.2001, whereby only in respect of the teachers, an amendment has been made in the existing general note 8(i) and new clause (ii) and (iii) have been inserted. Consequent upon this amendment, these rules are now called as the Rajasthan Civil Services (Revised Pay Scale) (third Amendment) Rules, 2001 (hereinafter referred to as the Amendment Act, 2001). The text of Note 8 of the notification dtd.8.6.2001 is reproduced as under:

“8. In the Rajasthan Civil Services (Revised Pay

Scale) Rules, 1998 in Schedule V, the existing "General Note (" shall be renumbered as 8 (i) and following clause (ii) and (iii) there under shall be inserted namely:-

(ii) The teachers (erstwhile Teacher Gr.III, drawing pay in the second selection grade of 6500-10500 and promoted as Sr. Teacher prior to 1.7.1989, shall draw pay in the sclae of 6500-10500 as senior scale of Sr. Teacher. Those Sr. Teachers who have not completed nine years of services as Senior Teacher on 1.7.1989, their pay on 1.7.1989, shall be fixed in the pay scale of Rs.5500-9000/- and such teachers shall be allowed pay in the senior scale of 6500-10500/- on completion of ten years of service as Sr. Teacher.

(iii) As a result of the re-fixation of the pay in accordance with the provisions contained in clause (ii) above, the recovery of the over payment, if any, shall stand waived for the period from 1.7.1998 on the date of issue of this notification...."

It has also been stated by the petitioners in the petition that all the employees who were getting their salary in the pay scale of Rs.2000-3200 were allowed revised pay scale in the pay scale No.12, which is 6500-10500/-, but it is strange that only for those who are working as teacher Grade IInd, new clause

has been inserted whereby the pay scale No.12 i.e. 6500-10500/- is sought to be taken back and the petitioners are sought to be given pay scale of Rs.5500-9900 and they have been allowed the pay scale of Rs.6500-10500/- on completion of 10 years of their service as Sr. Teacher. It has also been provided that the recovery on account of aforesaid exercise shall be waived or the period from 1.7.1998 to the date of issuance of the notification dtd.8.6.2001.

Further case of the petitioners is that the pay scale of Rs.6500-10500/- has been prescribed as a revised pay scale corresponding to the pay scale of Rs.2000-3200 as laid down in the Rules of 1998 and there is no rational or nexus with the object sought to be achieved by inserting new clause only in respect of teachers who were drawing their salaries in the pay scale of Rs.2000-3200/-, but arbitrarily, illegally and in utter violation of Article 14 of the Constitution of India, the benefit of revised pay scale which has become available on account of carrying the pay scale of Rs.2000-3200/- have been allowed to continue with the pay scale of Rs.6500-10500.

It has also been averred by the petitioners in the instant petition that in the notification dtd.25.1.1992, the 2nd selection grade has been provided for the Sr. Teachers as Rs.2000-3200 and the same was already allowed to the petitioners after completion of 18 years of service and thereafter the pay scales underwent revision under the Rules of 1998 and accordingly, those who were carrying the pay scale of Rs.2000-3200 were put to the pay scale of Rs.6500-10500/-. Thus, the grant of revised pay scale of Rs.6500-10500 is corresponding to the erstwhile pay scale of Rs.2000-3200 and such benefit extended to the petitioners cannot be sought to be taken away by the respondents as per their whims and caprice because of benefit of pay scale of Rs.6500-10500/- was granted to all the persons who were carrying the pay scale of Rs.2000-3200, therefore, the amendment made vide notification dtd.8.6.2001 is totally unconstitutional, illegal, arbitrary and ultravires to the mandate enshrined under Article 14 of the Constitution of India.

It has also been alleged by the petitioners that

they were allowed second selection grade on completion of 18 years of services and accordingly they were fixed in the pay scale of Rs.2000-3200 as intended by notification dtd.25.1.1992, but the notification dtd.8.6.2001 has the effect of snatching away the right accrued to them under the notification dtd.25.1.1992 without lawful reasons and reasonable rationals. The notification dtd.8.6.2001 is in derogation of the constitutional guarantee guaranteed under Article 14 of the Constitution of India.

It has also been alleged by the petitioners that impugned action has not been proceeded with the adherence of the principle of natural justice and hence, it is in violation of Article 311 of the Constitution of India.

It has also been alleged by the petitioners in the writ petition that the impugned action of the respondents is discriminatory as well as in as much as the benefit of revised pay scale of Rs.6500-10500 was granted to all the employees who were carrying the pay scale of Rs.2000-3200, but the notification

dtd.8.6.2001 seeks to result the discrimination qua the petitioner which is in fact in derogation of the constitutional provisions to be achieved by Article 14 of the Constitution of India and hence the same is not sustainable in the eye of law.

On the other hand, it has been contended on behalf of the respondents that prescription of the pay scale etc. are the subject matter of pay rules and policy of the State Government which are made after thorough considerations by the experts and high officials and if it is so, then while exercising the powers conferred under proviso to Article 309 of the Constitution of India, the competent authority has amended the Rajasthan Civil Services (Revised Pay Scale) Rules, 1998. That being the position, the said notification does not require any interference by this Hon'ble Court in any manner. It has also been alleged that the impugned amendment has been made after thorough considerations in order to achieve certain objects.

I have heard the learned counsel for the petitioners at length and scrutinised and scanned the

material available on record.

It is admitted position that the petitioners are working as Sr. Teacher who before coming into force of the Rules of 1998 was receiving the benefit of existing pay scale No.15 as indicated in the Schedule I i.e. pay scale of Rs.2000-3200 and after giving effect to the revised pay scales from September 1, 1996, the Revised Pay Scale No.12 i.e. pay scale of Rs.6500-10500 was given to him. After issuance of the impugned notification with retrospective effect, the secured and vested rights of the petitioners, who were already receiving the benefit of pay scale of Rs.6500-10500 prior to July 1, 1998 have been taken away. A benefit that has accrued to the petitioner under the existing Rules cannot be taken away by an amendment with retrospective effect and no statutory rule or administrative order can whittle down or destroy any right which has become crystallized and no rule can be framed under the Proviso to Article 309 of the Constitution of India which affects or impairs the vested rights. The Act of the State of Rajasthan in issuing impugned notifications retrospectively which have the effect of

taking away a benefit already available to the petitioners under the existing rule is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India.

During the course of arguments, it has also been submitted by the learned counsel for the petitioners that controversy involved in this case is squarely covered by the judgment rendered in S.B. Civil Writ Petition No.1243/2003 decided on 4.5.2004 in case of Chandra Mohan Singh V/s State and ors. reported in WLC 2004 Vol.3, page 413 as also S.B. Civil Writ Petition No.1562/2004 (Shanti Devi V/s State of Rajasthan and ors.) decided on 15.9.2004. and S.B. Civil Writ Petition No.4868/2004 (Dilip Kumar Tailor V/s State of Rajasthan and ors.) decided on 15.2.2005.

This fact has not been controverted by the learned counsel for the respondents.

Accordingly, this writ petition is also allowed in terms of above referred judgments in the following terms:-

(i) The impugned notification dtd.June 8, 2001 (Annex.5) to the extent they interfere with the accrued and vested rights of the petitioners and similarly situated employees in reducing the pay scale of Rs.6500-10500 to Rs.5500-9000 w.e.f. July 1, 1998 is declared ultra vires of the Constitution of India and only to that extent it stands quashed and set aside.

(ii) The petitioners unaffected by the impugned notification shall be entitled to retain the pay scale of Rs.6500-10500 and consequential monetary benefits in view of 1998 Rules which were given effect from September 1,1996.

(iii) The respondents are restrained from making any recovery from the petitioner in pursuance of order dtd.22.5.2003 (Annex.6) and if any recovery has already been affected, the entire recovered amount shall be refunded back within 30 days from the date of receipt of certified copy of this order.

(iv) There shall be no order as to costs.

(R.P.VYAS)J.

Rm/